

(1959) 04 MP CK 0024

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 15 of 1950

Iftikhar Ahmed

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 06-04-1959

Acts Referred:

Constitution of India, 1950 — Article 166, 31
Land Acquisition Act, 1894 — Section 17(1), 4, 6

Citation : AIR 1961 MP 140 : (1959) ILR (MP) 697 : (1960) 5 MPLJ 1384

Hon'ble Judges : T.C. Shrivastava, J; P.K. Tare, J

Bench : Division Bench

Advocate : B.V. Shukla, for the Appellant; S.B. Sen, Government Advocate for Respondent Nos. 1 and 2, R.S. Dabir and V.S. Dabir, for the Respondent

Judgement

Shrivastava, J.

This petition under Article 226 of the Constitution has been filed by the petitioner Iftikhar Ahmed for quashing notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). The petitioner also seeks to quash the declaration issued u/s 9 of the Act and prays for a writ restraining the State Government from taking any action on those notifications and the declaration.

The petitioner is the lessee of three survey numbers totalling to 6.93 acres in the City of Bhopal. The lease was taken by him from respondent No. 3 (Municipal Board, Bhopal). At the instance of respondent No. 2, the State Government (respondent No. 1) issued Notifications Nos. 768-19130-VII-N and 76-19130-VII-N respectively under Sections 4 and 6 of the Act. The first is dated 23-12-1958 and was published in the Madhya Pradesh Gazette on 2-1-1959.

The second is dated 3-1-1959 and was published in the Gazette on 9-1-1959. In the first notification, it was also stated that the lands were urgently required and so, in exercise of the powers u/s 17(4) of the Act, it was declared that the

provisions of Section 5A shall not apply. In the special notice served on the petitioner, it was stated that possession of the land would be taken immediately. The purpose for which the acquisition is being made is for constructing a new slaughter house.

The petitioner challenges the notifications on several grounds. It is contended that they are not properly authenticated and are vague, as they do not give description of the land sufficient to identify it. He states that the construction of a new slaughter house is not necessary and is not a public purpose. Further, he urges that the matter is not urgent and the land is not "waste or arable" land within the meaning of Section 17(1) of the Act. Therefore, the State Government exceeded its powers in declaring that Section 5A would not apply. The petitioner thus complains that Ee has been deprived of a valuable right to show cause against acquisition u/s 5A of the Act

The challenge of the notifications on the ground of improper authentication is without any substance. Several notifications appear together in the Gazette under the signature of the Under Secretary at the end of the series. The petitioner contends that the notifications are of different dates and each one should have separate signature of the authentication officer. We find that the notifications have been grouped together according to the usual practice and there is nothing wrong about it. The signature below applies equally to all the notifications above. We hold that the notifications have been properly authenticated.

On the question of the acquisition of land for a public purpose, the respondents contend that the issue is not justiciable. We need only refer to the decisions in *Hemabai Framjee v. Secy. of State for India* ILR 39 Bom 279 : (AIR 1914 PC 20) And *Province of Bombay Vs. Kusaldas S. Advani and Others*, , that the decision of the Government on the existence of a public purpose is open to judicial review. Further, as the power of acquisition of lands is restricted under I Article 31 of the Constitution to a public purpose, the matter becomes justiciable irrespective of anything contrary in the Land Acquisition Act.

Construction of a new slaughter house is necessary for maintaining the supplies of food to the residents of Bhopal. It is, therefore, a public purpose. It is in the affidavit of the State Government that the existing slaughter house is insufficient and insanitary. The Government and the local I authority are the best judges of the needs of the growing population of Bhopal; and unless their decision is not in good faith, it must ordinarily be accepted as correct.

It is true that the alternative or additional reason given by them that they have to spend the money set apart for the purpose quickly as delay causes loss of interest is not relevant to the issue. However, the fact remains that the respondents consider the construction of a new slaughter house necessary and in public interest for other reasons which are, in our opinion, adequate. We hold that the acquisition is for a public purpose.

The next contention is that the notifications issued under Sections 4 and 6 of the Act in this case do not give sufficient particulars of the land proposed to be acquired. All that they state is that an area of six acres of land in Bhopal City, is proposed to be acquired.

It is true that at the stage when a notification u/s 4 of the Act is issued, the Government is not in a position to say definitely which particular piece of land is proposed to be taken. A survey to determine the land most suitable for the purpose and to fix its boundaries has to be undertaken. All the same, the locality, in which the land to be acquired is, has to be given. The "locality" should be reasonably a small one to show the whereabouts of the land. We further consider that definite particulars of the land should be given.

After the insertion of Section 5A every person interested has a right to object to the acquisition of the land "which has been notified u/s 4, Sub-section (1)". Unless specific details are given, this is impossible. It would be difficult for the Collector to decide objections of thousands of persons of Bhopal who may apprehend that their six acres are likely to be acquired. It is no answer to say that at the stage of the notification u/s 4, there is no certainty about the lands finally to be acquired. The difficulty can easily be met by specifying all the lands which are being considered for acquisition and later specifying a smaller area in the notification u/s 6.

Under Section 6, definiteness about the specifications of the land is undoubtedly indicated. That section refers to any "particular land". It is this land which should be specified in the notification. The declaration made under this section is conclusive evidence "that the land is needed for a public purpose". In the instant case, the notification u/s 6 does not give the necessary particulars. It is true that the land could be ascertained from the map in the office of the Collector; but this is not enough as the persons really affected would not find anything in the notification to put them on the enquiry. It is preposterous to expect all the residents of Bhopal to visit the office of the Collector to inspect the map to ascertain if their lands are included in it.

The origin of the vagueness of these notifications can be traced to Forms I and II annexed to the instructions issued by the Government under the Act. Those forms, unlike Form III for a declaration u/s 9, do not prescribe any more particulars than the District, Tahsil, village and area of the land. In issuing the notifications, in the instant case, the department contented itself by giving these particulars only. It was overlooked that the instructions in para 9 on page 31 of the Land Acquisition Manual provide that the Collector has to add "any further particulars which he may deem necessary for the better identification of the land". The notifications would have conformed more to the requirements of law, if care had been taken to follow the instructions instead of mechanically adhering to the form.

Any way, the result is that the notifications under Sections 4 and 6 in this case

are vague and do not show the particular land proposed to be acquired. What then is the effect of this? It is contended on behalf of the State that as the application of Section 5A of the Act has been dispensed with, there is no prejudice to the petitioner as he could not prefer any objections in any case. That is so; but there is another effect which the notification u/s 4 produces u/s 23, clause firstly, the market value of the land as existing on the date of that notification is fixed for purposes of compensation. If a vague notification, like the present one, is allowed to pass muster, it can be used to freeze the value of any six acres of land in the big city of Bhopal. This would surely be far from the intention of the Act.

That apart, it appears to us that the notifications under Sections 4 and 6 are an essential part of the acquisition proceedings. They are in the nature of jurisdictional facts which give power to the land acquisition authorities to act further and in the absence of which subsequent proceedings would be ultra vires. In *Wali Mohammad and Others Vs. Gyan Prakash Naga Babaji and Others*, it has been held that if the identity of the land cannot be ascertained, the land acquisition proceedings are void. Accordingly, in the instant case, it must be held that the defective notifications under Sections 4 and 6 of the Act render all the subsequent land acquisition proceedings void, for want of jurisdiction.

In this view, it is not necessary for us to consider the further contentions that the State Government could not treat the case as one of urgency and dispense with the application of Section 5A or that Section 17 could not apply as the lands are not waste and arable lands. However, as the point has been argued at some length, we may briefly refer to the legal aspect relevant to these contentions.

Sub-section (4) of Section 17 of the Act applies only to those cases in which Sub-section (1) thereof is attracted. For the application of Sub-section (1), it is necessary that the land needed for a public purpose must be "waste and arable" land and the case must be one of urgency. The contention of the petitioner, in the instant case, is that the land is not "waste or arable" land, as he has levelled it at a huge cost and has constructed eight hutments for residence of labourers on it and has also stocked some building materials there. The land was waste land when it was leased. The hutments constructed by the petitioner are temporary as appears from the photograph filed by the respondents. Still, the portion which is occupied by these hutments cannot be considered waste land and Section 17(1) does not apply in terms to this part of the land. The rest of the land appears to be waste land.

It is incorrect to say that Sub-section (1) of Section 17 applies only in a case where all the land proposed to be acquired is waste land. It is clear from the words "can take possession of any waste or arable land needed for a public purpose" used in the sub-section that it can apply to any part of the land covered by the notifications. However, it is necessary for the Collector to demarcate such land before taking possession.

In *Lachhmi Narain and Others Vs. The State of Uttar Pradesh and Others*, , the land was mainly waste land, though there were some scattered constructions. It was held that the application of Sub-sections (1) and (4) of Section 17 could not be vitiated on that account as the action taken was in good faith. The only restriction which could be placed on the power to take possession was that the built-up area should be separated by the Collector and left out when possession is taken. A direction was given accordingly. The same view should apply to the present case.

On the question of urgency it has been held in *A. Natesa Asari Vs. State of Madras and Another*, , that the existence of urgency is a matter solely for the determination of the Government and is not a subject of judicial review. This decision was followed in *V. Harihara Prasad Vs. K. Jaganna Dhan and Another*, . We respectfully agree that this is the correct interpretation of the provisions in Sub-sections (1) and (4) of Section 17 of the Act. Therefore, the existence of the urgency or the situation requiring a direction that Section 5A shall not apply to the case cannot be challenged by the petitioner.

During the course of the arguments, the learned Government Advocate drew our attention to Ordinance No. 3 of 1959 published on 1-1-1959. By this Ordinance a new Section 17-A is added to the Act extending the provisions of Section 17 to building sites also. This Ordinance was relied upon to justify taking possession of the land even if part of it is covered with buildings. The notification u/s 4 was published on 2-1-1959 and takes effect from that date; but it is dated 23-12-1958 which fact makes it clear that the opinion of the Government on the question excluding Section 5A was reached on that date. The matter was not thus considered by the Government in the light of the provisions of the Ordinance which was promulgated later. We need not however, pursue this aspect in detail further.

As we have already said, the proceedings for acquisition are rendered invalid by the omission to specify sufficient particulars of the land in the notifications under Sections 4 and 6 of the Act. The petition must, therefore, be allowed. Accordingly, we quash the notifications and direct that the State Government shall not take any action for acquisition of the lands or taking possession thereof on their basis. Under the circumstances of the case, we make no order as to costs. The security amount shall be refunded to the petitioner.